

STATE ALLOCATION BOARD

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Date: July 7, 2003

To: Interested Parties

Subject: **NOTICE OF THE STATE ALLOCATION BOARD IMPLEMENTATION COMMITTEE MEETING**

Notice is hereby provided that the State Allocation Board Implementation Committee will hold a meeting on Wednesday, July 9, 2003 (9:30 am - 3:30 pm) at the 1500 Capitol Ave., Room(s) 72.148C and 72.149B, Sacramento, CA.

The Implementation Committee's proposed agenda is as follows:

1. Convene Meeting
2. SAB/OPSC Processes for Lease Lease Back Projects/180-Day Reimbursement Issue
3. Continuation High, Community Day and County Community Schools Classroom Loading and Funding Methods
4. Review SB 575 Survey Results (Automatic Fire Detection/Alarm System, Automatic Sprinkler System)

Any interested person may present public testimony or comments at this meeting regarding the issues scheduled for discussion. Any public input regarding unscheduled issues should be presented in writing, which may then be scheduled for a future meeting. For additional information, please contact Portia Jacobson at (916) 445-3159.

A handwritten signature in black ink, appearing to read "Bruce B. Hancock", with a long horizontal flourish extending to the right.

BRUCE B. HANCOCK
Chairperson

BBH:LM:pj

**State Allocation Board
Implementation Committee
July 9, 2003**

LEASE LEASE-BACK AGREEMENTS

This matter is being presented to the State Allocation Board for two purposes:

- ❑ Advise the SAB that projects constructed under lease Lease-back agreements are being recommended for reimbursement and to obtain SAB concurrence that that is a permissible use of state bond funds, and
- ❑ Propose amendments to current regulations necessary to clarify requirements for funding particular to lease lease-back arrangements.

Discussion

The Use of Education Code Section 17406 (Lease Lease-Back) as a contracting method.

Education Code Section 17406 provides a mechanism whereby a district may let district real property to a development entity without competitive bidding if the developer will construct a school facility and lease it back to the district. An increasing number of districts are using this approach to construct new facilities and modernize existing facilities. The districts then request State funding for the purpose of buying out the lease and acquiring the facility.

School districts which have used the Lease, Lease-back project delivery method cite the following as reasons for selecting it over the traditional design, bid, build approach:

- ❑ Avoid competitive bidding
Many districts consider the competitive bidding process as required under the Public Contracts Code to be problematic. The process leaves them with little control over the selection of the contractor for the project, and places them in financial jeopardy if the contractor selected is unwilling or unable to perform the construction as planned. The L, L-B process allows the district to select the contractor / developer based on criteria other than cost.
- ❑ Guaranteed price
The district is able to negotiate a fixed price for the lease and, if necessary, the purchase price of the project. Unanticipated costs are the responsibility of the contractor / developer, not the school district.
- ❑ Team approach
Districts have expressed the opinion that L, L-B allows a team approach to the construction of school facilities. The district, developer and contractor all have an interest in a project completed on time and in budget.
- ❑ Known contractor
Contractors can be selected on the basis of their record of success, recommendations from previous clients and financial strength.
- ❑ No experienced staff at district
Many districts do not have experience with large construction projects. The responsibility for co-ordination of the project, obtaining required approvals, and

Discussion (cont.)

project scheduling become the contractor / developers, who have demonstrated experience in similar school construction projects.

- ❑ Value engineering opportunities
- ❑ Contractors and subcontractors come from other industries; not the same as usually bid on school projects

Although the law in EC 17406 is clear in allowing districts to proceed on lease lease-back arrangements without competitive bidding, there may be reasons to proceed cautiously when using lease lease-back arrangements. Primary among these is summarized in the Supreme Court majority opinion in *The City of Los Angeles v. Offner* where the following was stated:

"It has been held generally in the numerous cases that have come before this court involving leases and agreements containing options to purchase that if the lease or other agreement is entered into in good faith and creates no immediate indebtedness for the aggregate installments therein provided for but, on the contrary, confines liability to each installment as it falls due and each year's payment is for the consideration actually furnished that year, no violence is done to the constitutional provision. If, however, the instrument creates a full and complete liability upon its execution, or if its designation as a 'lease' is a subterfuge and is actually a sales contract in which the 'rentals' are installment payments on the purchase price for the aggregate of which and immediate and present indebtedness or liability exceeding the constitutional limitation arises against the public entity, the contract is void."(underlining added)

Thus, while the benefits anticipated by districts using lease lease-back may be many, the provisions of EC 17406 may only be used in specific circumstances. It appears to the Office of Public School Construction that some of these circumstances may not truly exist in all lease lease-back contracts.

- ❑ The lease lease-back must be entered into in 'good faith'. Presumably that means that both parties to the agreement intend that a lease arrangement will exist and will be implemented.
- ❑ The lease arrangement may not be a subterfuge. Many districts openly admit that they are using lease lease-back contracts for the perceived benefits listed earlier.
- ❑ The agreement may not create an immediate indebtedness beyond each yearly installment. Some agreements require 'pre-lease' or 'rental' in one form or another which amount to the full cost of the facility. It appears that an immediate indebtedness has been created by the agreement which is being satisfied.
- ❑ The District must own the site on which the project will be constructed. Under EC 17402, the district owns the site if it holds title, has an option to purchase, or is acquiring the site through eminent domain. An arrangement whereby the option to purchase the site is with the developing entity could be construed as a subterfuge to avoid EC 17407. That section allows lease lease-back on

Discussion (cont.)

property owned by others, but specifically requires competitive bidding of the agreement.

To date, the OPSC has not taken a position on these potential issues, believing that defense of the use of EC 17406 rests with the district using the process. However, if a lease lease-back agreement is found by the courts to be inappropriate or to have been a subterfuge as defined by the Supreme Court, the agreement is void. If the agreement is voided, then it would appear that funds were released in conflict with the SFP law and that a 'material inaccuracy' occurred. In that case, the SAB will not be able to avoid involvement even though it was not a party to the decision to use a lease lease-back arrangement.

OPSC Policy Positions

Over a period of several years, the OPSC has responded to individual school district questions on issues related to the use of the provisions of EC 17406. These responses have begun to form the office's informal policy on lease lease-back project delivery methods. The responses are summarized below by general topic:

- The District must have title to the site on which the project will be constructed at the time that the apportionment is approved by the SAB.
- The lease agreement must contain the following provisions or information:
 - The value of the lease.
 - A provision that the title to the improvements on the site shall vest with the District upon completion of the project.
 - A provision that the lease agreement shall terminate within 180 days of the filing of a notice of completion or occupancy of the project by the District, whichever occurs first.
- State bond funds may not be used to make lease or rental payments.

Staff believes that these policies need to be approved by the Board and formalized through the regulatory process.

Proposals

Clarify that lease lease-back agreements meeting the requirements of EC 17406 may be used as a means of constructing or modernizing school facilities otherwise eligible under the SFP. Add regulation section 1859.23 as follows:

1859.23 SFP Application for Funding of Property Leased Under the Provisions of Education Code Section 17406.

In addition to meeting the requirements of Sections 1859.20 and 1859.21 or

Proposals (cont.)

1859.120, a district may receive SFP funds for facilities that have been constructed or modernized, or will be constructed or modernized, under a lease agreement pursuant to Education Code 17406 provided the following are met:

- (a) At the time the funding application is approved by the State Allocation Board, the district has title to the site or meets one of the following:
 - (1) the site acquisition is in final escrow,*
 - (2) the district is leasing the site for a term specified in 1859.22 (b), (1), (2) or (3) and the property lease is not connected to or a part of the lease lease-back agreement created under EC 17406.*
 - (3) the district has filed an action in eminent domain and has received an order of immediate possession of the site.**
- (b) A lease provision that title to the improvements on the site shall vest with the district upon completion of the project.*
- (c) A lease provision that the lease agreement shall terminate within 180 days ~~from the filing of a notice of completion or occupancy of the project by the district, whichever occurs first.~~ of a funding approval by the Board or occupancy of any portion of the project, whichever is later.*
- (d) The Application for Funding is filed with the Board not later than occupancy by the district of any part of the project.*
- (e) No funds from state bonds are used for lease or rental payments on the project.*

(Note: Address inconsistency between Section 1859.120(b) and (c); ...vest with the district upon completion of the project, versus 180 days from SAB apportionment or occupancy, whichever is later.)

Strike Section 1859.30(i) (5) and substitute the following:

(5) Where the funding was not approved under this Chapter and the district has not taken occupancy of the classroom.

Legal References

17072.35. A grant for new construction may be used for any and all costs necessary to adequately house new pupils in any approved project, and those costs may only include the cost of design, engineering, testing, inspection, plan checking, construction management, site acquisition and development, evaluation and response action costs relating to hazardous substances at a new or existing schoolsite, demolition, construction, acquisition and installation of portable classrooms, landscaping, necessary utility costs, utility connections and other fees, equipment including telecommunication equipment to increase school security, furnishings, and the upgrading of electrical systems or the wiring or cabling of classrooms in order to accommodate educational technology. A grant for new construction may also be used to acquire an existing government or privately owned building, or a privately financed school building, and for the necessary costs of converting the government or privately owned building for public school use.

17400. (a) Any school district may enter into leases and agreements relating to real property and buildings to be used by the district pursuant to this article.

(b) As used in this article, "building" includes each of the following:

- (1) One or more buildings located or to be located on one or more sites.
- (2) The remodeling of any building located on a site to be leased pursuant to this article.
- (3) Onsite and offsite facilities, utilities or improvements which the governing board determines are necessary for the proper operation or function of the school facilities to be leased.
- (4) The permanent improvement of school grounds.

(c) As used in this article, "site" includes one or more sites, and also may include any building or buildings located or to be located on a site.

17401. As used in this article "lease or agreement" shall include a lease-purchase agreement.

17402. Before the governing board of a school district enters into a lease or agreement pursuant to this article, it shall have available a site upon which a building to be used by the district may be constructed and shall have complied with the provisions of law relating to the selection and approval of sites, and it shall have prepared and shall have adopted plans and specifications for the building that have been approved pursuant to Sections 17280 to 17316, inclusive. A district has a site available for the purposes of this section under any of the following conditions:

(a) If it owns a site or if it has an option on a site that allows the school district or the designee of the district to purchase the site. Any school district may acquire and pay for an option containing such a provision.

(b) If it is acquiring a site by eminent domain proceedings and pursuant to Chapter 6 (commencing with Section 1255.010) of Title 7 of Part 3 of the **Code** of Civil Procedure, the district has obtained an order for possession of the site, and the entire amount deposited with the court as the probable amount of compensation for the taking has been withdrawn.

(c) In the case of a district qualifying under Section 17410, if it is leasing a site from a governmental agency pursuant to a lease having an original term of 35 years or more or having an option to renew that, if exercised, would extend the term to at least 35 years.

17403. The term of any lease or agreement entered into by a school district pursuant to this article shall not exceed 40 years.

17404. Sections 17455 to 17480, inclusive, shall not apply to leases made pursuant to this article.

17405. Any lease or agreement shall be subject to the following requirements:

(a) A building or structure that is to be used for school purposes shall be subject to the provisions of Article 3 (commencing with Section 17280) and Article 6 (commencing with Section 17365). A building or facility used by a school district under a lease or lease-purchase agreement into which neither pupils nor teachers are required to enter or that would be excluded from the definition of "school building," as contained in Section 17368, shall not be considered to be a "school building" within the meaning of Section 17283.

(b) Subdivision (a) shall not apply to trailer coaches used for classrooms or laboratories if the trailer coaches conform to the requirements of Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety **Code**, and the rules and regulations promulgated thereunder concerning mobilehomes, are not expanded or fitted together with other sections to form one unit greater than 24 feet in width, are used for special educational purposes, and are used by not more than 12 pupils at a time, except that the trailer coaches may be used by not more than 20 pupils at a time for driver training purposes.

(c) The site on which a leased relocatable structure is located shall be owned by the school district, or shall be under the control of the school district pursuant to a lease or a permit. "Relocatable structure" is any structure that is designed to be relocated.

(d) For purposes of interconnection of fire alarms, buildings leased for 24 months or less shall be subject to Section 809 of the Uniform Building **Code** until applicable regulations proposed by the State Fire Marshal are adopted as part of Title 24 of the California **Code** of Regulations.

(e) Notwithstanding any other provision of law, this section shall become operative on September 30, 1997.

17406. (a) Notwithstanding Section 17417, the governing board of a school district, without advertising for bids, may let, for a minimum rental of one dollar (\$1) a year, to any person, firm, or corporation any real property that belongs to the district if the instrument by which such property is let requires the lessee therein to construct on the demised premises, or provide for the construction thereon of, a building or buildings for the use of the school district during the term thereof, and provides that title to that building shall vest in the school district at the expiration of that term. The instrument may provide for the means or methods by which that title shall vest in the school district prior to the expiration of that term, and shall contain such other terms and conditions as the governing board may deem to be in the best interest of the school district.

(b) Any rental of property that complies with subdivision (a) shall be deemed to have thereby required the payment of adequate consideration for purposes of Section 6 of Article XVI of the California Constitution.

17407. The governing board of any school district may enter into an agreement with any person, firm, or corporation under which that person, firm, or corporation shall construct, or provide for the construction of, a building to be used by the district upon a designated site and lease the building and site to the district. The instrument shall provide that the title to the building and site shall vest in the district at the expiration of the lease, and may provide the means or method by which the title to the building and site shall vest in the district prior to the expiration of the lease, and shall contain such other terms and conditions as the governing board of the district deems to be in the best interest of the district.

The agreement entered into shall be with the lowest responsible bidder who shall give the security that any board requires. The board may reject all bids. For the purpose of securing bids the board shall publish at least once a week for two weeks in some newspaper of general circulation published in the district, or if there is no paper, then in some paper of general circulation circulated in the county, a notice calling for bids, stating the proposed terms of the agreement and the time and place where bids will be opened.

17424. The governing board of the school district shall obtain the general prevailing rate of per diem wages from the Director of the Department of Industrial Relations for each craft, classification or type of workman needed for the construction of the building and shall specify in the resolution and in the notice, required by Section 17417, or in the resolution required by Section 17418 and in the lease or agreement made pursuant to this article, what the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality is for each craft, classification or type of workmen needed for the construction of the building. The holidays upon which such rate shall be paid need not be specified by the governing board, but shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification or type of workmen employed on the project.

Any agreement or lease entered into pursuant to this article shall require that such general prevailing rates will be paid. It shall also require that work performed by any workman employed upon the project

in excess of eight hours during any one calendar day shall be permitted only upon compensation for all hours worked in excess of eight hours per day at not less than 1 1/2 times the basic rate of pay. There may also be included in leases or agreements entered into pursuant to this article any other requirements with respect to matters related to the subject of this section which the governing board deems necessary or desirable.

17425. The provisions of this article prevail over any provisions of law which conflict therewith.

**State Allocation Board
Implementation Committee
July 9, 2003**

**COMMUNITY DAY, COUNTY COMMUNITY DAY, COUNTY COMMUNITY AND
CONTINUATION HIGH SCHOOL REPORT**

BACKGROUND

In March 2003, the Office of Public School Construction (OPSC) released the *Review of the Funding Methods for Continuation High, Community Day and County Community Schools* report on behalf of the Department of General Services (DGS). This report was in response to Assembly Bill 695, Education Code Section (ECS) 17072.17, which directed the DGS, in conjunction with the California Department of Education (CDE), the Department of Finance (DOF), and the Legislative Analyst's Office (LAO), to review the method of funding the construction and modernization of school facilities for the following alternative education programs:

- Continuation High Schools
- Community Day Schools
- County Community Schools
- County Community Day Schools

CLASSROOM LOADING FOR ALTERNATIVE EDUCATION SCHOOLS

The report supports and the staff is proposing to change the current loading standards to 18 pupils per classroom for continuation high, community day and county community schools.

FUNDING OF SUPPORT FACILITIES FOR ALTERNATIVE EDUCATION SCHOOLS

One of the report's recommendations is to consider developing a new school allowance for Alternative Education Schools. The OPSC presented at its April and May 2003 Implementation Committee meetings, a chart to illustrate the square footage necessary for support facilities for alternative education facilities (see Attachment A). This chart was prepared with the assistance of the CDE, utilizing CDE educational specifications, and replacement square footage based on the Facility Hardship Chart under Regulation 1859.82(b).

At the May Committee meeting, the OPSC presented a proposed regulation for a cost allowance based on the square footage chart structured to provide additional funding for support facilities beyond the funds generated from the per pupil grant. Further analysis revealed this proposal provided excessive funding as compared to the SFP Excessive Cost to Construct a New School Project for conventional schools, and is not supported by the *Review of the Funding Methods for Continuation High, Community Day and County Community Schools* Report. Under the SFP, the amount of funding provided per pupil includes a portion for support facilities. As the number of classrooms and pupils increase in a project, the amount of funding for support facilities accumulates. The previous alternative education proposal did not account for that accumulation, which caused the excessive funding.

Revised Proposal for Funding Support Facilities

A revised proposed regulation has been developed (see Attachment B) that utilizes the same methodology as the Excessive Cost to Construct a New School Project for conventional schools. The dollar amounts in the current proposal were derived by utilizing the square footage recommendations from the CDE as illustrated on Attachment A plus accounted for the square footage for the classrooms (1,030 square feet per classroom). (Examples on Attachment C illustrate how the square footage recommendations were the basis of the new school allowance for Alternative Education schools.) The additional funding for each project is calculated by subtracting the base grant amount from the amount shown in the Alternative Education chart on Attachment B.

Additional Projects

The revised proposal permits additional funding as the district files additional applications for the same site with an offset provision to account for previous funding received for support facilities. An example is shown on Attachment D.

Grandfathering Provision

The proposal includes a grandfathering provision for those projects for which the final plans and specifications for the project were accepted by the DSA on or after July 23, 2003. This date may change and is anticipated to be the date that the SAB approves this proposal.

Existing Alternative Education Schools Built Outside These Proposed Regulations

The proposal includes similar provisions available to other districts that want to build support facilities for its existing schools. The proposal includes revisions to the Use of New Construction Grants regulations (see Attachment B) to accommodate the following Alternative Education support facilities:

- Multipurpose or Gymnasium
- Library
- Counseling Offices and/or Conference Rooms

Proposal Reflects 2003 Amounts

The amounts shown in this Committee item reflect the current 2003 costs to enable relevant discussion of this proposal. When this item is presented before the SAB, the dollar amounts shown in the chart, which will appear in the SFP Regulations, will reflect 1998 costs to coincide with the origination of the SFP. The accumulative cost indices will be applied to the dollar amounts in the chart, and eligible districts' approvals will be based on the current costs.

RECOMMENDATIONS

1. Amend Regulation Section 1859.2 to include the new loading standards.
2. Amend Regulation Section 1859.83(c).
3. Add Regulation Section 1859.83(c)(2) Excessive Cost to Construct a New Alternative Education School.
4. Amend Regulation Section 1859.77.3 to allow Alternative Education Schools to utilize Use of Grants (new construction) requests.

ATTACHMENT A

	Column 1	Column 2	Column 3
Support Facility	Project contains 1 or 2 classrooms	Project(s) contains 3 to 10 classrooms	Project(s) contains 11 or more classrooms
Multipurpose Facility or Gymnasium (includes food service)	2,500 sq. ft.	6.3 sq. ft. per pupil minimum 4,000 sq. ft.	6.3 sq. ft. per pupil minimum 7,200 sq. ft.
Toilet	5 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.
School Administration	1,000 sq. ft. Combined Total	4 sq. ft. per pupil minimum 800 sq. ft.	4 sq. ft. per pupil plus 800 sq. ft.
Counseling offices, small group areas, and/or conference rooms		1,000 sq. ft.	1,000 sq. ft.
Library/Media Space		4.3 sq. ft. per pupil plus 600 sq. ft.	4.3 sq. ft. per pupil plus 600 sq. ft.

ATTACHMENT B

Amend Section 1859.2. Definitions.

For the purpose of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the Act:

“Academic Achievement” means to improve one’s ability to engage in academic endeavors and to accomplish study in core curriculum areas such as reading, writing, mathematics, fine arts, science, vocational education, technology, history or social science.

“Act” means the Leroy F. Greene School Facilities Act of 1998.

“Adjacent” means the HSAs that will make up the Super HSA are adjoining, touching, or share a common geographical boundary.

“Alternative District Owned Site” means a district owned site that is deemed available for the project by the California Department of Education.

“Alternative Education ” means community day, county community, county community day, and continuation high schools with a loading standard of 18 pupils per classroom.

“Application” means a request pursuant to the Act to receive an eligibility determination and/or funding for a school project.

“Apportionment” shall have the meaning set forth in Education Code Section 17070.15(a).

...

Amend Section 1859.83. Excessive Cost Hardship Grant.

(c) Excessive Cost to Construct a New School Project.

(1) With the exception of Alternative Education schools for which the final plans and specifications for the project were accepted by the DSA on or after July 23, 2003, if the project is for a new elementary, middle or high school on a site with no existing school facilities the district is eligible for a New Construction Excessive Cost Hardship Grant equal to the difference in the amount provided by the New Construction Grant and the amount shown below, based on the number of classrooms, including classrooms used for Individuals with Exceptional Needs, in the project:

Class-rooms in project	Elementary School	Middle School	High School
1	\$160,000	\$674,000	\$1,466,000
2	\$377,000	\$756,000	\$1,525,000
3	\$566,000	\$840,000	\$1,885,000
4	\$717,000	\$932,000	\$2,205,000
5	\$842,000	\$1,028,000	\$2,428,000
6	\$1,021,000	\$1,125,000	\$2,651,000
7	\$1,202,000	\$1,222,000	\$2,874,000
8	\$1,341,000	\$1,328,000	\$3,046,000
9	\$1,341,000	\$1,440,000	\$3,184,000
10	\$1,577,000	\$1,553,000	\$3,321,000
11	\$1,577,000	\$1,666,000	\$3,459,000
12	\$1,660,000		\$3,585,000
13			\$3,709,000
14			\$3,833,000
15			\$3,958,000
16			\$4,082,000
17			\$4,207,000
18			\$4,331,000
19			\$4,455,000
20			\$4,580,000
21			\$4,704,000
22			\$4,828,000

The amounts shown above will be adjusted annually in the manner prescribed in Section 1859.71.

Any Excessive Cost Hardship Grant provided under this subsection for a new school project shall be offset against future New Construction Grant funds provided for that same school. The amount of the offset shall be determined by dividing the additional New Construction Grant pupil request by the difference in the New Construction Grant pupil request when the initial Excessive Cost Hardship Grant was made and 325 for an elementary school, 324 for a middle school, and 621 for a high school project and multiplying the quotient by the Excessive Cost Hardship Grant funds provided under this subsection for that project.

(2) Excessive Cost Hardship Grants for Alternative Education schools for which the final plans and specifications for the project were accepted by the DSA on or after July 23, 2003 may be requested as follows:

(A) If the project is for an Alternative Education school on a site with no existing school facilities, the district is eligible for a New Construction Excessive Cost Hardship Grant equal to the difference in the amount provided by the New Construction Grant and the amount shown below, based on the number of classrooms in the project:

<u>No. of Classrooms</u>	<u>Alternative Education School</u>
<u>1</u>	<u>\$487,830</u>
<u>2</u>	<u>\$591,860</u>
<u>3</u>	<u>\$1,012,323</u>
<u>4</u>	<u>\$1,130,190</u>
<u>5</u>	<u>\$1,251,087</u>
<u>6</u>	<u>\$1,372,085</u>
<u>7</u>	<u>\$1,492,982</u>

<u>No. of Classrooms</u>	<u>Alternative Education School</u>
<u>15</u>	<u>\$2,892,741</u>
<u>16</u>	<u>\$3,021,011</u>
<u>17</u>	<u>\$3,149,180</u>
<u>18</u>	<u>\$3,277,450</u>
<u>19</u>	<u>\$3,405,619</u>
<u>20</u>	<u>\$3,533,788</u>
<u>21</u>	<u>\$3,662,058</u>

<u>8</u>	<u>\$1,613,980</u>
<u>9</u>	<u>\$1,734,877</u>
<u>10</u>	<u>\$1,855,774</u>
<u>11</u>	<u>\$2,379,964</u>
<u>12</u>	<u>\$2,508,133</u>
<u>13</u>	<u>2,636,403</u>
<u>14</u>	<u>\$2,764,572</u>

<u>22</u>	<u>\$3,790,227</u>
<u>23</u>	<u>\$3,918,497</u>
<u>24</u>	<u>\$4,046,666</u>
<u>25</u>	<u>\$4,174,835</u>
<u>26</u>	<u>\$4,303,105</u>
<u>27</u>	<u>\$4,431,274</u>

The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

(B) If the project is for additional classroom(s) to an existing Alternative Education school, constructed under the provision of 1859.83(c)(2), the district is eligible for a New Construction Excessive Cost Hardship Grant calculated as follows:

1. Determine the amount as shown in the chart above in Section 1859.83(c)(2)(A) for the total combined number of classrooms in the current project and for all previous projects at the same site. In the first occurrence when the total number of classrooms exceed 27, the amount shown for 27 classrooms shall be used.
2. Subtract the amount as shown in the chart above in Section 1859.83(c)(2)(A) for the sum of the number of classrooms for all previous projects at the same site (exclude the classrooms in the current project).
3. Subtract the New Construction Grant for the current project.

Amend Section 1859.77.3 as follows:

Amend Section 1859.77.3. Use of New Construction Grant Funds for Projects Accepted by the DSA after January 22, 2003.

New Construction Grant funds and any other funds provided by these Regulations shall be expended as set forth in Education Code Section 17072.35; and may also be utilized for the cost incurred by the district for the development and implementation of remedial action plan approved by the DTSC pursuant to Education Code Section 17213; and for the costs incurred by the district directly or through a contract with a third party provider for the initiation and enforcement of a labor compliance program pursuant to Labor Code Section 1771.7.

Authorization for use of New Construction Grants for which the final plans and specifications for the project were accepted by the DSA after January 22, 2003 may be requested as follows:

- (a) A district may request new construction grants that exceed the capacity of the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations if the project is to construct a multipurpose, gymnasium and/or library, or for an Alternative Education school to construct a multipurpose/gymnasium, library, counseling offices, and/or conference rooms, at an existing site that does not have an existing or adequate facility of the type being requested when all of the following is met:
 - (1) The district must adopt a school board resolution that has been discussed at a public hearing at a regularly scheduled meeting of the district's governing board on a date preceding the application filing that includes the following:
 - (A) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.
 - (B) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.
 - (C) A plan outlined in the resolution that identifies how the district has housed or will house the pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan must certify one of the following methods:
 1. The district will construct or acquire facilities for housing the pupils with funding not otherwise available to the SFP as a district match within five years of project approval by the SAB, and the district must identify the source of the funds; or
 2. The district will utilize higher district loading standards providing the loading standards are within the approved district's teacher contract and do not exceed 33:1 per classroom.
 - (2) The existing school site was not constructed under the SFP.

- (3) The proposed project includes no more than eight classrooms.
- (4) Grant requests, above 100 percent of the number of pupils to be housed, based on Special Day Class pupil eligibility are only permitted under this subsection (a) when building a Special Day Class facility.
- (5) For purposes of this section to determine if an existing facility is inadequate, the existing square footage is less than 60 percent of the square footage necessary for the current CBEDS for the site plus the Net School Building Capacity of the proposed project as calculated pursuant to Section 1859.82(b), with the exception for Alternative Education schools refer to the following:

<u>Support Facility</u>	<u>Existing Site Plus Proposed Project Contain 1 or 2 Classrooms</u>	<u>Existing Site Plus Proposed Project Contain 3 to 10 Classrooms *</u>	<u>Existing Site Plus Proposed Project Contain 11 or More Classrooms*</u>
<u>Multipurpose Facility or Gymnasium (includes food service)</u>	<u>2,500 sq. ft.</u>	<u>6.3 sq. ft. per pupil minimum 4,000 sq. ft.</u>	<u>6.3 sq. ft. per pupil minimum 7,200 sq. ft., maximum of 18, 000 sq. ft.</u>
<u>Counseling Offices, and/or Conference Rooms</u>	<u>1,000 sq. ft. Combined Total</u>	<u>1,000 sq. ft.</u>	<u>1,000 sq. ft.</u>
<u>Library/Media Space</u>		<u>4.3 sq. ft. per pupil plus 600 sq. ft.</u>	<u>4.3 sq. ft. per pupil plus 600 sq. ft.</u>

* The proposed project cannot include more than eight classrooms.

- (6) The maximum excess pupil amount being requested for this type of Use of Grants request, is calculated by the following:
- (A) Multiply the current CBEDS for the site plus the Net School Building Capacity for the proposed project by the square footage for the type of facility being requested, pursuant to Section 1859.82(b), with the exception for Alternative Education schools refer to subsection (5) above.
 - (B) Multiply the product in (6)(A) above by the per square foot grant amount for multipurpose, gymnasium or library facilities pursuant to Section 1859.82(b), utilizing the same per square foot grant amount for the Alternative Education school facilities listed in subsection (5) above.
 - (C) Divide the product in (6)(B) above by the New Construction Grant amount for the project grade level, rounded up to the nearest whole number.
- (b) A district may request new construction grant eligibility determined at a different grade level than the proposed project that does not exceed the capacity of the project, unless the project includes a request as indicated in Section 1859.77.3(a), based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations when all of the following is met:
- (1) The district must adopt a school board resolution that has been discussed at a public hearing at a regularly scheduled meeting of the district's governing board on a date preceding the application filing that includes the following:
 - (A) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.
 - (B) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.
 - (C) A plan outlined in the resolution that identifies how the district has housed or will house the pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan must certify one of the following methods:
 - 1. The district will construct or acquire facilities for housing the pupils with funding not otherwise available to the SFP as a district match within five years of project approval by the SAB, and the district must identify the source of the funds; or
 - 2. The district will utilize higher district loading standards providing the loading standards are within the approved district's teacher contract and do not exceed 33:1 per classroom; or
 - 3. The pupils requested from a different grade level will be housed in classrooms at an existing school in the district which will have its grade level changed, to the grade level requested, at the completion of the proposed SFP project.
 - (2) Only New Construction Grant eligibility for grades Kindergarten through 12 can be requested pursuant to this subsection (b), and the district must use its New Construction Grant eligibility, pursuant to subsection (b), in the following order:
 - (A) At the grade level of the proposed project, if available.
 - (B) At the lowest grade level other than the proposed project, if available.
 - (C) At the next highest grade level other than the proposed project.
 - (c) A district may request new construction eligibility based on the SFP Regulation Section 1859.77.2 or 1859.77.3, as appropriate, in place as of the date of a local bond election provided that clear language was included in the local bond that specifically identified the proposed project, and provided that the project meets all laws and regulations of the SFP.

If a district wishes to amend its Approved Application to include or increase its Use of Grants request after the submittal to the OPSC, the district must request in writing that the Approved Application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

The New Construction Grant amount provided shall be determined based on the grant amount provided in Education Code Section 17072.10 for the grade level that generated the eligibility and any New Construction Additional Grant or New Construction Excessive Cost Hardship Grant the district qualifies for as provided by these regulations.

Note: Authority cited: Section 17072.13, Education Code.

Reference: Sections 17072.13 and 17072.35, Education Code.

ATTACHMENT C

Examples How Attachment A Square Footage Recommendations are the Basis of the
New School Allowance for Alternative Education Schools

Square Footage Calculations

No. Class-rooms	Pupils		Facility Square Footage (1,030 x No. Crs)	Multi-purpose`	Toilet	Admin	Office/Conf etc.	Library	Total Square Footage *
	Minimum	Maximum							
2	19	36	2,060	2,500	300	1,000	-	0	5,860
6	91	108	6,180	4,000	540	800	1,000	1,065	13,585
15	253	270	15,450	7,200	1,350	1,880	1,000	1,761	28,641

* Provides benefit of maximum number of pupils per classroom in each square footage category.

New School Allowance for an Initial Alternate Education School Application

No. Class-rooms	Pupils		Facility Square Footage	Multiplied by \$101/ sq.ft.**	New School Allowance	\$ Per Pupil	Base Grant \$	New School Grant \$	Combined Total
	Minimum	Maximum							
2	19	36	5,860	101	\$ 591,860	\$ 16,441	\$ 291,096	\$ 300,764	\$ 591,860
6	91	108	3,585	101	\$ 1,372,085	\$ 12,704	\$ 873,288	\$ 498,797	\$1,372,085
15	253	270	28,641	101	\$ 2,892,741	\$ 10,714	\$ 2,183,220	\$ 709,521	\$ 2,892,741

** The SFP high school grant of \$8,086 divided by an average of 80 square foot per pupil.

ATTACHMENT D

New Alternative Education School Offset Example

INITIAL FUNDING - New Alternative Education School 2 classrooms, 36 pupil High School

	<i>New Proposal</i>
	<i>Amounts</i>
Base Grant	\$ 291,096
New School Grant	\$ 300,764
Total	\$ 591,860 *

SUBSEQUENT FUNDING REQUEST - 3 Additional Classroom Request (54 Pupils)

	<i>New Proposal</i>
	<i>Amounts</i>
New School Amount for Total CR's	\$ 1,251,087
Offset New School Amount for All Previous CR's	\$ (591,860)
Subtract Current Project's Base Grant	\$ (436,644)
New School Grant Funding for this Project	\$ 222,583
Base Grant and New School Funding for this Project*	\$ 659,227 *

SUBSEQUENT FUNDING REQUEST - 4 Additional Classroom Request (72 Pupils)

	<i>New Proposal</i>
	<i>Amounts</i>
New School Amount for Total CR's	\$ 1,734,877
Offset New School Amount for All Previous CR's	\$ (1,251,087)
Subtract Current Project's Base Grant	\$ (582,192)
New School Grant Funding for this Project	\$ (98,402)
Base Grant and New School Funding for this Project*	\$ 483,790 *

* **IMPORTANT NOTE:** In addition to the amount shown, each project can access all excessive costs and additional grants for which it would otherwise be eligible, (i.e., small school, geographic, urban, multistory, project assistance, site development, site acquisition, etc.).

**State Allocation Board
Implementation Committee
July 9, 2003**

**SENATE BILL 575 SURVEY
Automatic Fire Detection /Alarm
and Automatic Sprinkler Requirement**

BACKGROUND

Senate Bill (SB) 575, Chapter 725, Statutes of 2001 requires all school district plans for new construction and modernization submitted to the Division of the State Architect (DSA) and requesting funding under the School Facility Program on or after July 1, 2002 to include automated fire detection, alarm, and in certain types of construction, a sprinkler system. In addition, this law required the State Allocation Board (SAB) to modify the existing grants for new construction and modernization to cover the costs associated with the purchase and installation of an automatic fire detection alarm and/or sprinkler system. The SAB adopted regulations in June 2002 to include an increase to the per pupil grants for these costs.

A provision in SB 575 requires the SAB to review the adequacy of the per pupil grant adjustments and determine if these adjustments are sufficient. The SAB is required to perform this review prior to July 1, 2003.

INITIAL GRANT CREATION

Since SB 575 required the SAB to adjust the per pupil grant amounts for new construction and modernization to cover the increased costs of installing these systems, the Office of Public School Construction (OPSC) was faced with the difficult task of locating resources that could assist in creating the grant adjustments. The OPSC solicited data at two SAB Implementation Committee meetings for this purpose and contacted the DSA and the Office of the State Fire Marshall (OSFM) to request information and resources. The OSFM and the DSA provided the OPSC with several sources which enabled access to the data needed. The OPSC utilized these sources to create the initial per pupil grant for new construction and modernization.

A factor that influenced the decision to create the per pupil grants with limited information was the timeline for the implementation of this law. The California Building Standards Commission adopted the OSFM's regulations on an emergency basis; therefore, the regulations would require the DSA and the SAB to implement SB 575 on July 1, 2002.

SUMMARY OF SURVEY RESULTS

To assist the OPSC in conducting a meaningful review of the adequacy of the per pupil grants, the OPSC mailed a survey to all districts that received funding under these new fire code provisions. A total of nearly 100 surveys were sent out with 49 responses received (20 new construction and 29 modernization projects). Included with the survey the districts submitted either a detailed cost breakdown, such as a contractor bid, or schedule of values. The districts that responded to the survey represent northern, central, and southern areas of California, as well as suburban, urban and rural.

SUMMARY OF SURVEY RESULTS (cont.)

Today we are discussing the results of the survey, and our recommendations which are outlined in the below chart:

New Construction (Additions to an existing site):

<i>Description</i>	<i>Current Per Pupil Grant * @ 50% State Share</i>	<i>Per Pupil Grant Based on Survey @ 50% State Share</i>	<i>Recommended Per Pupil Grant** @50% State Share</i>
Alarm/Detection – Elementary	\$30.00	\$6.35	\$7.00
Alarm/Detection – Middle	\$39.00	\$9.75	\$10.00
Alarm/Detection – High	\$29.00	\$16.50	\$17.00

New Construction (New School / New Campus):

<i>Description</i>		<i>Current Per Pupil Grant * @ 50% State Share</i>		<i>Per Pupil Grant Based on Survey @ 50% State Share</i>		<i>Recommended Per Pupil Grant** @50% State Share</i>	
		<i>Grant \$</i>	<i>Combined Total</i>	<i>Grant \$</i>	<i>Combined Total</i>	<i>Grant \$</i>	<i>Combined Total</i>
<i>Elementary</i>	Alarm/Detection	\$30.00	\$124.00	\$6.35	\$111.08	\$7.00	\$112.00
	Sprinkler	\$94.00		\$104.73		\$105.00	
<i>Middle</i>	Alarm/Detection	\$39.00	\$151.00	\$9.75	\$132.58	\$10.00	\$135.00
	Sprinkler	\$112.00		\$122.83		\$125.00	
<i>High School</i>	Alarm/Detection	\$29.00	\$156.00	\$16.50	\$146.50	\$17.00	\$147.00
	Sprinkler	\$127.00		\$130.00		\$130.00	

Modernization:

<i>Description</i>	<i>Current Per Pupil Grant * @ 80% State Share</i>	<i>Per Pupil Grant Based on Survey @ 80% State Share</i>	<i>Recommended Per Pupil Grant** @80% State Share</i>
Alarm/Detection – Elementary	\$118.00	\$76.68	\$77.00
Alarm/Detection – Middle	\$146.00	\$76.72	\$77.00
Alarm/Detection – High	\$143.00	\$72.80	\$77.00

* This per pupil grant amount is representative of the current grant amount based on the January 1, 2003 Index.

** These per pupil grant amounts will be shown in regulations at the 1998 index amount to coincide with other grants provided in the regulations.

SUMMARY OF SURVEY RESULTS (cont.)

The survey results show that some costs were under-funded and others were over-funded. As a result, the OPSC is recommending that the per pupil grant amounts be adjusted accordingly to reflect the actual costs. The initial per pupil grant developed for new construction projects that contain or require automatic sprinkler systems is inadequate; therefore, the OPSC is recommending that these costs be increased to reflect the actual costs. The initial new construction and modernization per pupil amount for fire alarm/detection is excessive, and the OPSC is recommending that the per pupil grant be reduced. The average for the actual project costs from the survey results is the basis of our recommended amounts.

Special Day Class Pupils

The initial per pupil grant adjustments for SDC pupils was created by increasing the SDC grants proportionately from the base grant to the SDC base grant. The survey results did not delineate whether the project contained SDC pupils; therefore, the OPSC has no data to support if the grants are sufficient or not. However, we recommend adjustment of the SDC per pupil grants accordingly to be consistent with the recommended amounts in this item.

RECOMMENDATIONS

1. Adjust the current per pupil new construction and modernization grants for fire alarm/detection system based upon the based upon the recommended per pupil grant amount indicated in the chart above.
2. Adjust the current per pupil new construction grant for automatic fire alarm and sprinkler system recommended per pupil grant amount indicated the chart above.
3. Adjust the Special Day Class per pupil grants based upon the adjustment to the new construction and modernization grants recommended above.